

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EDUARDO S. MARTINEZ,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

NO: 4:20-CV-5061-TOR

ORDER SUMMARILY DISMISSING
HABEAS PETITION

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid. The Clerk of Court shall **TERMINATE** the pending deadline to comply with the filing fee requirements.

EXHAUSTION REQUIREMENT

Petitioner challenges a 2020 Benton County jury conviction for two counts of first-degree rape of a child. He was sentenced to 120 months incarceration. Petitioner indicates he has filed an appeal. ECF No. 1 at 2.

1 In his grounds for relief, Petitioner argues that the State of Washington has no
2 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long
3 been settled that state courts are competent to decide questions arising under the U.S.
4 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the
5 state court, as much as it is that of the federal courts, when the question of the validity
6 of a state statute is necessarily involved, as being in alleged violation of any
7 provision of the federal constitution, to decide that question, and to hold the law void
8 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805
9 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal
10 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments
11 to the contrary lack merit.

12 Additionally, before a federal court may grant habeas relief to a state prisoner,
13 the prisoner must exhaust the state court remedies available to him. 28 U.S.C.
14 § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
15 a prisoner give the state courts an opportunity to act on his claims before he presents
16 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
17 petitioner has not exhausted a claim for relief so long as the petitioner has a right
18 under state law to raise the claim by available procedure. *See Id.*; 28 U.S.C.
19 § 2254(c).

1 To meet the exhaustion requirement, the petitioner must have “fairly
2 present[ed] his claim in each appropriate state court (including a state supreme court
3 with powers of discretionary review), thereby alerting that court to the federal nature
4 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
5 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
6 the factual or legal bases for that claim and by alerting the state court “to the fact
7 that the ... [petitioner is] asserting claims under the United States Constitution.”
8 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
9 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
10 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

11 Furthermore, to fairly present a claim, the petitioner “must give the state
12 courts one full opportunity to resolve any constitutional issues by invoking one
13 complete round of the State's established appellate review process.” *O'Sullivan*, 526
14 U.S. at 845. Once a federal claim has been fairly presented to the state courts, the
15 exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275 (1971).
16 It does not appear from the face of the Petition or the attached documents that
17 Petitioner has exhausted his state court remedies as to each of his grounds for relief.
18 Indeed, Petitioner affirmatively represents that he has not exhausted his state court
19 remedies to the state's highest court. ECF No. 1 at 2.

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1 GROUNDS FOR FEDERAL HABEAS RELIEF

2 Petitioner asserts that the Washington state constitution contradicts the federal
3 constitution regarding the Fifth Amendment right to “presentment or indictment of
4 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
5 his arrest, conviction and imprisonment illegal.

6 Petitioner seems to argue that because the state courts have defied “federally
7 established procedures and processes for the adjudication of crimes” only “a court
8 of federal jurisdiction” has jurisdictional authority over his claims. His bald
9 assertion that “due process of the law was ignored” is unsupported by his factual
10 allegations.

11 The United States Supreme Court stated long ago: “Prosecution by
12 information instead of by indictment is provided for by the laws of Washington.
13 This is not a violation of the Federal Constitution.” *See Gaines v. State of*
14 *Washington*, 277 U.S. 81, 86 (1928). There is no federal constitutional violation
15 when a prosecuting attorney’s criminal information is substituted for the grand jury’s
16 indictment. *See Hurtado v. California*, 110 U.S. 516 (1884) (rejecting the claim that
17 an indictment is essential to due process of law and that a state violates the
18 Fourteenth Amendment by prosecuting a defendant with a criminal information).
19 Consequently, Petitioner’s assertions to the contrary presented in his four grounds
20 for federal habeas relief are legally frivolous.

1 Because it plainly appears from the petition and the attached exhibits that
2 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF
3 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in
4 the United States District Courts.

5 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
6 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
7 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
8 taken in good faith, and there is no basis upon which to issue a certificate of
9 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
10 appealability is therefore **DENIED**.

11 **DATED** May 11, 2020.



12 A handwritten signature in blue ink that reads "Thomas O. Rice".
13 THOMAS O. RICE
14 Chief United States District Judge
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